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HOUSE BILL 3084
By Litz

SENATE BILL 3504
By Ketron

AN ACT to amend Tennessee Code Annotated, Title 56, and to enact the "Tennessee County Mutual Insurance Company Act of 2006".

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 56-5-301, is amended by deleting subdivision (7) in its entirety and by renumbering the remaining subdivisions appropriately.

SECTION 2. Tennessee Code Annotated, Section 56-6-110, is amended by deleting subdivision (3) in its entirety and by renumbering the remaining subdivisions appropriately.

SECTION 3. Tennessee Code Annotated, Title 56, is amended by deleting the current chapter 22 in its entirety and by substituting instead Sections 4 through 22 of this act as a new chapter 22 thereto.

SECTION 4. The title of this act is, and may be cited as, the "Tennessee County Mutual Insurance Company Act of 2006".

SECTION 5. This chapter governs the qualifications and procedures for licensing and general regulatory requirements for county mutual insurance companies insuring risks and property in this state.

SECTION 6. As used in this chapter, unless the context otherwise requires:

(1) "Certificate of authority" means a legal right granted by the commissioner and enjoyed by a county mutual insurance company to provide insurance as provided for in this chapter;

(2) "Commissioner" means the commissioner of commerce and insurance;

(3) "County mutual insurance company" means a person that is authorized to provide insurance coverage pursuant to this chapter;

(4) “Department” means the department of commerce and insurance;

(5) “Gross premium” means maximum gross premiums as provided in the policy contracts, new and renewal, including policy or membership fees, whether paid in part or in whole by cash, automatic premium loans, dividends applied in any manner whatsoever, and without deduction or exclusion of dividends in any manner, but excluding premiums returned on cancelled policies, on account of reduction in rates, or reductions in the amount insured;

(6) “Insurer” or “insurance company” means any corporation, association, partnership or individual engaged as a principal in the business of insurance not licensed pursuant to this chapter;

(7) “Person” means an individual, a corporation, a partnership, an association, a joint stock company, a trust, an unincorporated organization, any similar entity or any combination of the foregoing acting in concert;

(8) “Policyholder” means a person who is insured by a county mutual insurance company;

(9) “Premium” means money given in consideration to a county mutual insurance company on account of or in connection with an insurance policy for a specified policy period;

(10) “Principal place of business” means the primary office maintained by a county mutual insurance company in the county in which a county mutual insurance company was first granted a certificate of authority; and

(11) “Surplus” means the accumulated assets of a county mutual insurance company that exceed the county mutual insurance company’s accrued losses and expenses.

SECTION 7. It is unlawful for any person to enter into a contract of insurance as a county mutual insurance company or transact insurance business in this state as a county mutual insurance company without a certificate of authority provided by the commissioner.

SECTION 8.

(a) To apply for a certificate of authority, a person shall file with the commissioner an application on a form adopted by the commissioner, accompanied by a nonrefundable filing fee in the amount referenced in §56-4-101(a)(1). A person in this state applying for a certificate of authority to act as a county mutual insurance company shall, under penalty of refusal, suspension or revocation of the certificate of authority, declare therein that the statements made in the application are true, correct and complete to the best of the person's knowledge and belief.

(b) An application for a certificate of authority shall include the following documentation, together with such other information or documentation as the commissioner may require:

(1) A certified copy of the articles of incorporation, charter or other such document;

(2) A certified copy of the bylaws or other similar document; and

(3) The names of the officers and directors of the county mutual insurance company.

(c) No certificate of authority shall be granted or maintained unless the applicant or county mutual insurance company can prove to the commissioner's satisfaction that it will be able to write at least one hundred (100) policies of insurance and possesses at least two hundred thousand dollars ($200,000) in surplus.

SECTION 9.

(a) A certificate of authority granted pursuant to this chapter shall authorize the county mutual insurance company to insure losses or damage to property including losses of use and occupancy, by fire, lightning, explosion, windstorm, hail, riot, civil commotion, aircraft, vehicles, collision (extended only to farm machinery, livestock, and other covered farm property), overturn of farm equipment, smoke, glass, theft, vandalism, falling objects, weight of ice, snow or sleet, freezing, sudden and accidental damages caused by discharge or failure of plumbing, heating, air-conditioning or automatic sprinkler systems, sudden and accidental tearing apart, cracking, burning or bulging of plumbing, heating, air-conditioning or automatic sprinkler systems, sudden and accidental jolts from artificially generated electrical currents to electrical appliances, devices, fixtures and wiring, electrocution, drowning, vicious animals, sinkhole, collapse and volcanic action.

(b)

(1) When a county mutual insurance company provides the same financial security to policyholders, and meets all other requirements applicable to insurance companies writing the same insurance transactions, it may also provide comprehensive personal liability, farmers comprehensive personal liability, premises liability for dwellings up to four (4) families, premises liability for churches and medical payment coverage associated therewith, subject to the same limitations that apply to insurance companies and upon the express written permission of the commissioner. The commissioner may, with cause, withdraw the permission to write that business permitted by this subsection. Any decision by the commissioner to withdraw such permission may be reviewed as a contested case pursuant to the Uniform Administrative Procedures Act, compiled

at title 4, chapter 5, provided that the county mutual insurance company requests a hearing within thirty (30) days after notice of the withdrawal of such permission.

(2) Any county mutual insurance company meeting the requirements of subsection (b)(1) must place on deposit with the commissioner such an amount that the commissioner deems necessary for the protection of policyholders of this state, the sum of which may be no less than two hundred thousand dollars ($200,000). The commissioner may decline to accept for deposit any specific issue of securities if the commissioner determines that such securities may not provide the necessary protection to policyholders and creditors.

(c)

(1) A certificate of authority shall not authorize a county mutual insurance company to issue a policy of insurance covering those risks found in subsection (a) where the retained amount of risk by the county mutual insurance company on any single risk exceeds the lesser of:

(A) Twenty thousand dollars ($20,000) plus three percent (3%) of the county mutual insurance company's surplus; or

(B) One hundred thousand dollars ($100,000).

(2) Any county mutual insurance company meeting the requirements of subsection (b) may not issue a policy of insurance covering those risks found in subsection (b) where the retained amount of risk by the county mutual insurance company on any single risk exceeds one hundred thousand dollars ($100,000) liability and five thousand dollars ($5,000) medical payments.

(3) For the purpose of calculating the allowable amount of risk that may be retained by a county mutual insurance company on any single risk under

subsection (c)(1)(A), the surplus of the county mutual insurance company shall be the lesser of:

(A) That surplus that was reported in the county mutual insurance company's last annual statement;

(B) The surplus level last known by the county mutual insurance company; or

(C) Such surplus level as the commissioner may determine from any examination or investigation of the county mutual insurance company.

(d) A county mutual insurance company may deduct the amount of reinsurance secured on a single risk in determining the retained amount of risk by the county mutual insurance company. A county mutual insurance company may secure reinsurance pursuant to §56-2-208(1).

(e) No county mutual insurance company shall write in excess of ten million dollars ($10,000,000) in annual direct gross written premium under any certificate of authority granted by the commissioner.

(f)

(1) A county mutual insurance company subject to the provisions of this chapter may issue policies of insurance on property located in the county in which its principal place of business is located and in all those counties contiguous to the county in which its principal place of business is located. Whenever any county mutual insurance company has a surplus of at least seven hundred fifty thousand dollars ($750,000), it may be authorized, through the express written permission of the commissioner, to extend its operation to counties contiguous to the county in which its principal place of business is

located in the second degree. Whenever any county mutual insurance company has a surplus of at least three million dollars ($3,000,000), it may be authorized, through the express written permission of the commissioner, to extend its operation to all such other counties in this state as the commissioner may allow.

(2) In addition to those surplus requirements found in (f)(1) of this section, a county mutual insurance company shall maintain a surplus of at least thirty-three percent (33%) of the county mutual insurance company's gross premium. Any county mutual insurance company failing to maintain the surplus requirements of this subdivision shall be considered to be operating in a hazardous financial condition and shall be subject to Sections 20 and 21 of this chapter.

(3) This subsection shall not prevent any county mutual insurance company possessing a certificate of authority from the commissioner on June 30, 2006, from continuing its operations in any county in which it is legally doing business through December 31, 2010. Any county mutual insurance company not meeting the requirements of (f)(1) of this section by December 31, 2010, must begin the process of winding down its business in those counties in which it is not lawfully permitted to do business under this section with such winding down to be completed by December 31, 2011.

(g) After the effective date of this chapter, no county mutual insurance company shall adopt any name which does not contain the phrase "Mutual Insurance Company", or which is so similar to any name already in use by any existing person organized and doing business in the United States, as to be confusing or misleading.

(h) Except as provided for in Section 14, no county mutual insurance company shall be required or permitted to join, or contribute financially to, any insurance insolvency guaranty fund or similar mechanism in this state, nor shall any county mutual insurance company, or its insured or claimants against its insured, receive any benefit from any such fund for claims arising under the insurance policies issued by such county mutual insurance company. The policy declaration pages of every county mutual insurance company shall prominently disclose that the policyholder is not entitled to receive any benefit from the Tennessee Guaranty Association.

SECTION 10.

(a) Every policyholder in good standing shall be entitled to one (1) vote in person or by ballot transmitted by mail, as shall be provided in the bylaws, in any election for directors or upon any other issues properly brought to the policyholders for consideration.

(b)

(1) No officer, director or other person whose duty it is to determine the character of risk and upon whose decision the application for insurance shall be accepted or rejected shall receive as any part of such person's compensation a commission upon the premium, but the compensation shall be a fixed salary, and/or such share of the net profits of the county mutual insurance company as the board of directors may determine appropriate.

(2) Nothing under subsection (b)(1) of this section shall be construed to prohibit a county mutual insurance company from providing for its directors, officers and other employees reasonable benefits, including, but not limited to, directors' compensation, health insurance benefits and retirement benefits. Such benefits may be offered by a county mutual insurance company.

(3) The commissioner may promulgate rules to set appropriate expense ratios to address those expenses incurred in subsections (b)(1) and (b)(2) of this section.

SECTION 11.

(a) In the event that the commissioner determines the existing surplus to be inadequate, a county mutual insurance company shall seek to accumulate a surplus or emergency fund in such an amount as might be deemed necessary by the commissioner.

(b) A county mutual insurance company may invest its assets in the same manner as an insurance company licensed to write property and casualty lines of insurance as provided for by title 56, chapter 3, part 4.

(c) A county mutual insurance company may borrow money for the purpose of paying extraordinary losses. A county mutual insurance company shall conduct its affairs in such a manner as to pay those losses as might normally be expected in the course of doing business and to accumulate a surplus that might be used to pay losses above normal losses. A county mutual insurance company may borrow money only when it incurs substantial, extraordinary losses, and must notify the commissioner of its intent to borrow money to pay such losses at least ten (10) business days before borrowing such money.

SECTION 12.

(a)

(1) Every county mutual insurance company operating under this chapter shall file an annual statement with the commissioner on or before March 1 of each year that reports the company's financial condition and business on December 31 of the previous year. The annual statement shall be submitted on

such form as the commissioner may prescribe and shall be accompanied by a fee as provided for in §56-4-101(a)(4).

(2) Any county mutual insurance company failing to make and file the annual statements required by this section shall have its authority to do new business suspended until such time that the required annual statement is filed and shall pay a fine of one hundred dollars ($100) a day for the period during which the county mutual insurance company's authority is suspended. Any suspension of a county mutual insurance company's authority to write new business shall not preclude or otherwise bar the commissioner from levying any other penalties or take any other actions allowed under this chapter.

(3) The annual statement as filed with the commissioner under this section shall be presented at the annual meeting of the county mutual insurance company and shall be available for examination by any policyholder of the county mutual insurance company during its regular business hours.

(4) Every county mutual insurance company operating under this chapter shall prepare its annual statement and any other financial information required under this chapter in accordance with rules promulgated by the commissioner and the National Association of Insurance Commissioners accounting practices and procedures manual in effect for the period covered by the annual statement.

(b)

(1) Every county mutual insurance company shall comply with the filing requirements for personal risk insurers found in §56-5-305. All rates and forms shall be reviewed under the standards set forth in §§56-5-303 and 56-5-304. The commissioner may disapprove such rates or forms pursuant to the process outlined in §56-5-308.

(2) The cancellation by a county mutual insurance company of a policy of insurance is subject to the same standards as those set forth in title 56, chapter 7, part 19, as may be applicable.

(3) Subject to the restrictions provided herein, a county mutual insurance company may pay a dividend to its policyholders as the board of directors may determine. The amount of dividends paid during any calendar year by a county mutual insurance company shall not exceed ten percent (10%) of the lowest level of accumulated surplus existing on any day during the same calendar year. All proposed dividend payments shall be filed with the commissioner at least thirty (30) days prior to the proposed payment date. The commissioner may promulgate, by rule, standards by which dividends will be reviewed. Any decision by the commissioner to disapprove a proposed dividend of a county mutual insurance company may be reviewed as a contested case pursuant to the Uniform Administrative Procedures Act, compiled at title 4, chapter 5, provided that the county mutual insurance company requests a hearing within thirty (30) days after the denial of the proposed dividend request.

SECTION 13. All county mutual insurance companies shall be required to carry an aggregate excess of loss reinsurance policy of no less than three percent (3%) of business in force. The amount required for such a policy shall be reduced by the county mutual insurance company's accumulated surplus.

SECTION 14.

(a) If the assets of a county mutual insurance company are insufficient to pay its existing liabilities, including those liabilities incurred but not reported and other obligations, as well as maintain the reserves required under this chapter, the county mutual insurance company shall notify the commissioner immediately.

(b) Upon notice or determination by the commissioner of a county mutual insurance company's insolvency under subsection (a), the commissioner shall promptly institute appropriate action under Section 21 of this chapter.

(c)

(1) After the institution of action under Section 21 of this chapter, the commissioner, as early as is practicable, shall determine the amount of the insolvency and shall order the remaining county mutual insurance companies to pay an assessment in the amount of the insolvency, as well as any additional costs anticipated to be incurred by the commissioner for conducting the assessment. However, the commissioner shall not assess a county mutual insurance company in excess of that county mutual insurance company's gross premium reported for the previous year.

(2) In the event that the amount assessed by the commissioner exceeds the amount of the insolvency, the commissioner shall refund the excess amount to the assessed county mutual insurance companies.

(3) The commissioner shall have the authority to contract with such experts, actuaries, examiners, legal counsel and other persons for the purpose of assisting in the assessment. All costs incurred by the commissioner in conducting the assessment shall be assessed to the county mutual insurance companies that are subject to the assessment.

(d)

(1) Any county mutual insurance company failing to pay an assessment under subsection (c) when it is made due by the commissioner shall forfeit and pay to the state, in addition to the amount of the assessment, an amount equal to five percent (5%) per month (or fractional part thereof) of the delinquency. All

delinquencies shall bear interest at the rate of ten percent (10%) per annum from the date the assessment was due until paid. The penalty and interest herein provided for shall apply to any part of the assessment unpaid by the due date and no penalty or interest may be waived.

(2) Any county mutual insurance company that fails to pay an assessment ordered by the commissioner under this chapter within thirty (30) days of the date when the assessment is made due by the commissioner shall be summarily suspended from transacting any business in this state until the assessment is paid.

(e) Assessments made by the commissioner shall be allowed as a credit against premium taxes imposed on a county mutual insurance company, up to twenty-five percent (25%) of the net premium taxes due in any one (1) calendar year, until the aggregate of all assessments paid by the county mutual insurance company have been offset by such premium tax credit.

(f) The commissioner may bring action in the chancery court for Davidson County to recover any uncollected assessment against a county mutual insurance company.

SECTION 15. The acquisition or merger of a county mutual insurance company is subject to the same standards and procedures set forth in §56-11-203, and any rules promulgated thereunder.

SECTION 16.

(a) A person shall not sell, solicit or negotiate insurance covering those risks listed under Section 9(a) of this chapter unless the person is licensed to sell property insurance under title 56, chapter 6, part 1.

(b) A person shall not sell, solicit or negotiate insurance covering those risks listed under Section (9)(b) of this chapter unless the person is licensed to sell casualty insurance under title 56, chapter 6, part 1.

(c) Any person that seeks to enter into a contract for the exclusive or dominant right to manage or control a county mutual insurance company shall be considered the managing general agent of the county mutual insurance company and shall comply with the requirements that apply to managing general agents under title 56, chapter 6, part 5.

SECTION 17.

(a) All county mutual insurance companies shall pay a tax at the rate of two and one-half percent (2.5%) of their gross premiums.

(b) In addition to the premium taxes levied on county mutual insurance companies under subsection (a) of this section, any county mutual insurance company writing fire insurance and lines of business having fire coverages as a part of the risk rate shall pay additional taxes as found in §56-4-208 for the purpose of executing the fire marshal law. For the purposes of this subsection, the following portions of the amounts required to be reported by line of business in the annual statement required by Section 12 shall be considered premiums for insurance covering the peril of fire:

(1) Fire lines, one hundred percent (100%);

(2) Farmowners and homeowners multiple peril, fifty-five percent (55%);

(3) Combined coverages including fire, extended coverages, vandalism, malicious mischief and theft, sixty percent (60%).

(c) Payments for those premium taxes levied on county mutual insurance companies under subsection (a) of this section shall be paid on a quarterly basis, with payments being due on or before June 1 for the first quarter of the calendar year, September 1 for the second quarter, December 1 for the third quarter and March 1 for the fourth quarter of the previous calendar year.

(d) Should any county mutual insurance company fail or neglect to properly make the returns and payments required under this section, such county mutual insurance company shall be subjected to the interest and penalties found in §56-4-216.

SECTION 18.

(a) The commissioner may investigate or examine the affairs of a county mutual insurance company to the same extent that the commissioner may investigate or examine the affairs of an insurance company doing business in this state. At least once every five (5) years, the commissioner shall examine the affairs of each county mutual insurance company holding a certificate of authority in this state as to both its financial condition and its compliance with the law.

(b) After the completion of an examination undertaken under subsection (a), the requirements and procedures of §56-1-411(d) shall be followed.

(c) A county mutual insurance company examined by the commissioner shall pay all costs of the examination, including, but not limited to, the reasonable fees of actuaries, accountants, attorneys and other professionals which the commissioner may enter into a contract with to perform examination services on behalf of the commissioner.

(d) All working papers, recorded information, documents or copies thereof produced by, obtained by or disclosed to the commissioner or any other person in the course of an examination made under this chapter must be given confidential treatment and may not be made public by the commissioner or any other person, except to the extent provided under §56-1-411. Access may also be granted to the National Association of Insurance Commissioners under §56-44-105, or to any other state or federal agency or law enforcement authority as the commissioner deems appropriate.

SECTION 19.

(a) In addition to all other powers granted under this chapter, the commissioner may issue an order requiring a county mutual insurance company to cease and desist from engaging in any act or practice found to be in violation of this chapter or any other applicable law, rule, regulation or order of the commissioner.

(b) Any order issued pursuant to this section shall be accompanied by a notice to the county mutual insurance company as to the right to have a hearing. All hearings conducted pursuant to this chapter shall be done in accordance with the Uniform Administrative Procedures Act, compiled at title 4, chapter 5.

(c) Without limitation on other remedies provided by law, upon finding that any county mutual insurance company or other person has violated any cease and desist order issued by the commissioner, the commissioner may seek enforcement of such order through the attorney general and reporter in the chancery court of Davidson county.

SECTION 20.

(a) The commissioner may, after notice and a hearing, levy a civil penalty in an amount not to exceed ten thousand dollars ($10,000) against a county mutual insurance company or an entity required to be licensed as a county mutual insurance company upon a finding that the county mutual insurance company or the entity required to be licensed as a county mutual insurance company or an officer or director of the county mutual insurance company or the entity required to be licensed as a county mutual insurance company:

(1) Has violated a provision of this chapter or any rule promulgated thereunder;

(2) Has violated any order issued by the commissioner, including, but not limited to, those orders issued under Sections 14, 18 and 19 of this chapter;

(3) Is in a hazardous operating condition;

(4) Has made a filing with the commissioner containing fraudulent or materially false or misleading statements of fact;

(5) Has failed or refused to pay for the costs of any examination of the county mutual insurance company undertaken under this chapter;

(6) Has been convicted of a felony; or

(7) Has committed any unfair act or practice as set forth in §§56-8-103 or 56-8-104.

(b) All hearings conducted pursuant to this section shall be conducted pursuant to title 4, chapter 5.

(c) Each day of continued violation shall constitute a separate violation for purposes of determining the possible amount of penalty under this section.

SECTION 21. The commissioner may subject a county mutual insurance company to any proceeding or action authorized pursuant to title 56, chapter 9 under the same terms as insurance companies. For all such purposes, county mutual insurance companies are deemed to meet the definition of insurance company set forth in such chapter.

SECTION 22. A director, an officer, a member, an insurance producer, or an employee of a county mutual insurance company who knowingly or intentionally, directly or indirectly, uses or employs, or allows another person to use or employ, money, funds, securities, or assets of the county mutual insurance company for private profit or gain commits a fraudulent insurance act under §56-53-102, subjecting such person to the criminal penalties found in §56-53-104.

SECTION 23. The commissioner is authorized to promulgate rules and regulations to effectuate the purposes of this act. All such rules and regulations shall be promulgated in accordance with the provisions of Tennessee Code Annotated, Title 4, Chapter 5.

SECTION 24. This act shall take effect upon passage for rulemaking purposes. For the purposes of the licensing of insurance producers under Section 16, this act shall take effect on July 1, 2007. This act shall take effect for all other purposes on January 1, 2007, the public welfare requiring it.